Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 19, 1997

The Honorable Mark W. Stiles
Chair, Calendars Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768

Letter Opinion No. 97-006

Re: Constitutionality of Transportation Code requirement that applicant for original, renewal, or duplicate driver's license provide fingerprints, and related questions (ID# 39233)

Dear Representative Stiles:

You have asked this office a series of questions relating to the constitutionality of section 521.142 of the Transportation Code, formerly article 6687b, V.T.C.S., as amended by Act of May 24, 1995, 74th Leg., R.S., ch. 669, Tex. Gen. Laws 3641, 3641. Section 521.142, as amended, requires every applicant for an original, renewal, or duplicate driver's license to furnish as part of that application his or her thumbprints or index fingerprints. As your letter notes, the requirement that an applicant for an original license provide such fingerprints has been part of Texas law since 1967. *See* Act of May 19, 1967, 60th Leg., R.S., ch. 328, § 3, 1967 Tex. Gen. Laws 778, 780.

Your questions arise from an incident involving one of your constituents who went to a local Department of Public Safety office to renew his driver's license. Upon being informed of the requirement that he give his fingerprints, he protested. He agreed to fulfill the statutory requirement only if the Department of Public Safety would file with his application a statement in which he expressed the view that his right against self-incrimination had been violated. When the Department of Public Safety official would not grant this request, he departed the office without having renewed his license.

You have asked this office a series of questions related to this matter. In our view, these questions require us first to consider the constitutionality of section 521.142. Generally, constitutional challenges to fingerprinting requirements have failed.

The reasons why such challenges have been routinely disallowed by courts were perhaps best expressed by Judge Weinfeld in *Thom v. New York Stock Exchange*, 306 F. Supp. 1002 (S.D.N.Y. 1969), *aff'd sub nom., Miller v. New York Stock Exch.*, 425 F.2d 1074 (2d Cir. 1970). In *Thom*, the plaintiffs brought suit against various brokerage firms, the New York Stock Exchange, and the Attorney General of New York, seeking to show that a New York statute requiring employees of security exchanges and clearing corporations be fingerprinted as a condition of employment was unconstitutional as

> (1) an invasion of privacy in violation of the Ninth and Fourteenth Amendments; (2) an illegal search and seizure in violation of the Fourth

> Amendment; (3) punishment without due process of law in violation of the Fourteenth Amendment; and (4) an invidious and irrational discrimination against employees of member firms of national security exchanges, resulting in denial of equal protection of the laws in violation of the Fourteenth Amendment.

Id. at 1004.

In the view of the court, "the questions presented lack the necessary constitutional substance." *Id.* at 1005. The court specifically rejected the plaintiff's privacy argument that "fingerprints are a system of social control, of intrusion upon one's past and future life, and accordingly, that the state must show strong justification for such an intrusion . . . ." *Id.* at 1007. Noting the prevalence of fingerprinting requirements, along with other identification requirements, in modern life and law, *Thom* asserts:

> The submission of one's fingerprints is no more an invasion of privacy than the submission of one's photograph or signature to a prospective employer, which the Stock Exchange rules still require. As the Supreme Court in *Davis* [*v. Mississippi*, 394 U.S. 721 (1969)] observed, "Fingerprinting involves none of the probing into an individual's private life and thoughts that an interrogation or search." The actual inconvenience is minor; the claimed indignity, nonexistent; detention, there is none; nor unlawful search; nor unlawful seizure.

Id. at 1009 (footnotes omitted).

Thom also rejects the notion that the fingerprinting requirement implicates the right against self-incrimination:

> And even if plaintiffs were to succeed in establishing that the state intended to incorporate these fingerprints into its central criminal identification files to be used as a means of future crime detection, such a procedure does not run afoul of any constitutional prohibitions . . . . The state having presented a valid justification under its police power for the original taking of the prints under reasonable circumstances, their use for future identification purposes, even in criminal investigations, is not impermissible.

Id. at 1011 (footnotes omitted).

In answer to your first question, then, a citizen does not, as you put it, "relinquish or compromise his rights" by allowing an impression of his fingerprints to be taken in compliance with section 521.142 of the Transportation Code, because a citizen has no more constitutional right to refuse to give such an impression than he has to refuse to give his signature or have his photograph taken for the same purpose. The fingerprint requirement here is as constitutionally permissible as are

a host of such statutory requirements from jurisdictions throughout the nation, many of which Judge Weinfeld listed in an appendix to the *Thom* opinion and which have not diminished in the intervening twenty-seven years. *Id.* at 1012-13.

We know of no principle which would require the Department of Public Safety to inform every driver that his or her fingerprints might at some indefinite point in the future be used in the investigation of crime. The case of a person seeking a driver's license is not analogous to that of an arrested person subject to interrogation, who must under *Miranda v. Arizona*, 384 U.S. 436 (1966), be apprised of his right against self-incrimination. Nor does a mere suspicion that such information might at a later time be used to one's detriment implicate the Sixth Amendment. Such an argument was made, to no avail, in *United States v. Freed*, 401 U.S. 601 (1971). Writing for the court, Justice Douglas responded:

> Appellee's argument assumes the existence of a periphery of the Self-Incrimination Clause which protects a person against incrimination not only against past or present transgressions but which supplies insulation for a career of crime about to be launched. We cannot give the Self-Incrimination Clause such an expansive interpretation.

Id. at 606-07.

The Department of Public Safety is under no statutory obligation of which we are aware to file extraneous papers which a citizen may wish to attach to an application for a driver's license. The requisite information which must be filed is set forth in detail in the Transportation Code. We find there no provision requiring that the Department of Public Safety accept or keep declarations purporting to reserve rights to applicants, and this office has neither the power nor the will to create such a requirement.

As to the final question of whether the Department of Public Safety may take the fingerprints of a minor child of seventeen without informed parental consent, we note that such a minor generally cannot obtain a license without such consent, *see* Transp. Code § 521.145, and that accordingly the question does not arise.

To summarize, then, there is no constitutional impediment to the requirement now contained in section 521.142 of the Transportation Code that an applicant for an original, renewal, or duplicate driver's license submit his or her thumb or index fingerprints as a part of such an application.

SUMMARY

There is no constitutional impediment to the requirement now contained in section 521.142 of the Transportation Code that an applicant for an original, renewal, or duplicate driver's license submit his or her thumb or index fingerprints as a part of such an application.

Yours very truly,

James E. Tourtelott

James E. Tourtelott
Assistant Attorney General
Opinion Committee